

ORDINANCE NUMBER 99-04

AN ORDINANCE OF THE TOWN OF WESTFIELD REPLACING THE EXISTING PEDDLERS AND SOLICITORS REGULATIONS

WHEREAS, the Town Council is the governing body of the Town of Westfield, in Hamilton County, in the State of Indiana, and

WHEREAS, Indiana Code IC-36-8-2-11 allows for municipalities to regulate the activity of peddlers and solicitors in their communities; and

WHEREAS, the Town Council of the Town of Westfield, Indiana so desires to amend the existing peddlers and solicitors town regulations as defined by ordinance.

NOW THEREFORE BE IT ORDAINED by the governing body of the Town of Westfield, Hamilton County, Indiana that the following ordinance replace the existing Peddlers and Solicitors ordinance in the "Code of Ordinances" Town of Westfield

Chapter 46 Peddlers and Solicitors

Sec. 46.1 Definitions

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Other names applied to essentially the same function as those described below will also have to comply with the requirements of this ordinance. It is to the total discretion of the Clerk-Treasurer to determine if other job titles essentially are performing these same functions.

Itinerant Merchant

This is any person who shall engage temporarily in the selling of any kind of goods, wares, or merchandise, within the town, regardless of whether such goods, wares or merchandise are peddled from house to house, sold upon the streets or other public places, or sold from any room, building, structure or lot rented or leased for the purposes of carrying on such business.

It shall also include any person selling from house to house or place to place who does not have a regularly established place of business in the town.

It shall also include any person who participates in advertising (e.g. holding signs at intersections that would direct potential customers to another site to buy a good or

service). No advertising of this nature can be accomplished by standing, sitting, or walking on any street median that separates opposing traffic lanes.

This site being advertised does not have to be within the town limits. The key factor is that the person participating in advertising with any medium is located within the town limits.

Solicitor

This means any person who goes from house to house or place to place in the town selling or taking orders for goods, wares or merchandise of any article for future delivery.

Sec 46.2 Registration Required

It shall be unlawful for any person to engage in the business of itinerant merchant or in the business of solicitor within the town until that person complies with the provision of this chapter.

Sec 46.3 Registration Requirements

- a. No person shall sell or take orders for any goods, wares, merchandise, or services without first applying for and being issued a registration certificate.
- b. An applicant for a registration certificate shall execute an application form at the office of the Clerk-Treasurer at least seven (7) days prior to engaging in any sales activity in the town. The form shall require:
 1. Applicants name, home address, and local address, if any;
 2. A photograph or a physical description of the applicant
 3. The name and address or principal office of the person, firm, organization, or corporation for whom the applicant is authorized to conduct such activity solely on his own behalf
 4. A brief description of the type of goods or services to be sold and a statement whether delivery of such goods or services is to be immediate or in the future
 5. The applicant may be asked to authorize a criminal records check prior to be approved.
 6. A sample of the order and receipt form used by applicant if the applicant canvasses or solicits orders.
 7. AT the time of executing such application form, the applicant shall also submit in person to the Clerk –Treasurer written proof of his identity and a specimen of the applicants signature

8. The application is a continuing application and if, after the issuance of the registration certificate, the information in the application shall become inaccurate for any reason, and the holder of the registration certificate intends to continue his activity, notice of such change and the correct information shall be furnished to the office of the Clerk-Treasurer within 24 hours.
9. The certificate issued shall expire on the date specified on the Certificate.

Sec 46.4 Issuance of Registration Certificate

On compliance of the applicant with the above provisions, the Clerk-Treasurer shall issue a registration certificate, which shall be dated and signed by the Clerk-Treasurer.

The Clerk-Treasurer shall have up to five business days to process the application. If the clerk Treasurer finds the applicant has had a previous registration certificate revoked, this is grounds for refusal to issue a registration certificate.

Sec 46.5 Registration Fees and Bonds

Each application shall be accompanied by a bond in the penal sum of \$1000.00 executed by surety company or two responsible freeholders residing within the town (or in lieu thereof a cash bond of equal amount), conditioned that all goods, wares, or merchandise or articles sold by the applicant will be as represented by him, and that he will refund the purchase price of any goods, wares, merchandise or articles sold by him which are not as represented.

Any person aggrieved may bring an action on the bond for the recovery of money or damages or both. If a cash bond is deposited, it shall be retained by the town for a period of 90 days after the expiration of any such license.

The following registration fees will apply:

1.	For one day,	\$10.00
2.	For one week,	\$15.00
3.	For one month	\$30.00
4.	For one year	\$100.00

All such license fees must be paid in advance and if any such licensee desires to continue in business after the expiration of such license, a new license must be secured in the same manner and upon the same terms as the original license.

Any person or business exempted by the laws of the state from the payment of the license fees shall, before beginning such business, present to the Clerk-Treasurer, of the town his credential, showing that he is entitled to such exemption, and shall file a bond as above required,

and upon approval of the bond by the Clerk Treasurer, he shall receive a certificate from the clerk-treasurer authorizing him to engage in the business of solicitor or itinerant merchant within the town for any period not longer than one year. If at the end of such period the person desires to continue in such business, another certificate must be procured from the town clerk-treasurer

Sec 46.5 Conditions of Registration Certificate

All certificates are nontransferable and entitle the holder to sell, distribute, solicit, or canvass within the town, subject to the following conditions;

1. The holder shall have the certificate in his possession at all times, and shall exhibit the same at any time on request by any police officer of the town or by any individual.
2. The holder shall not enter into or on any house, building, or other structure of any land or property, without the prior consent of the owner or occupant thereof.
3. The holder of a certificate shall make no false statement or misrepresentation of fact in the course of carrying on the activity for which the certificate is granted, and shall conduct himself at all times in an orderly and lawful manner.
4. The holder of a certificate who takes orders for the future delivery of any type of goods or service shall be required to deliver such goods or service before any payment is made. It is unlawful to require "deposit" money for the expectation of future delivery of goods and services.

Sec 46.6 Revocation of Certificate

- a. Any certificate issued may be revoked by the Clerk-Treasurer after notice of hearing for any fraud, misrepresentation, or false statement contained in the application, or for failure to observe the conditions of the certificate as set forth in 46.5.
- b. Notice after hearing for revocation of a certificate shall be in writing, stating the reason for the hearing, and the time and place thereof. Notice shall be given to the holder at least three days, if by personal service, and at least five days if by mail, addressed to the holder's last known local address, or if none, his home address prior to the date for the hearing.

Sec. 46.7 Exceptions

The following are exempt from the provisions of this chapter

- a. Persons engaged in the sale of newspapers
- b. Persons who sell farm or dairy products or other foodstuffs of their own raising or produced by him or by members of his immediate family
- c. Persons who have established permanent places of business within the town limits and bona fide salesmen selling at wholesale to such resident merchants
- d. Sales for nonprofit services or civic organizations who have an office, chapter, or lodge located in Hamilton County
- e. Persons engaged in sales during the Westfield Summerfest who have registered with and paid fees to the festival committee.

Sec 46.8 Penalty

Any person who violates any part of the provisions of this chapter shall, on conviction, be punished as provided in section 1-6.

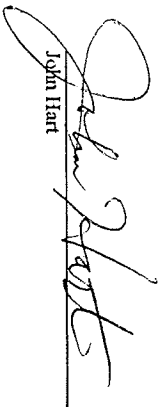
ADOPTED AND PASSED THIS 14 DAY OF JUNE, 1999 BY THE
WESTFIELD TOWN COUNCIL, HAMILTON COUNTY, INDIANA.

WESTFIELD TOWN COUNCIL Hamilton County, Indiana

Voting For

Voting Against

Abstain


John Hart

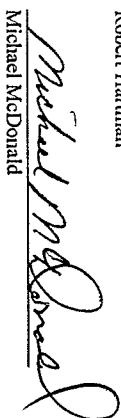
John Hart

John Hart

Robert Hartman

Robert Hartman

Robert Hartman


Michael McDonald

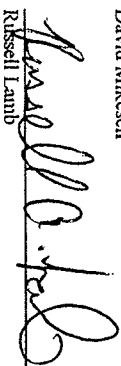
Michael McDonald

Michael McDonald


David Mikesell

David Mikesell

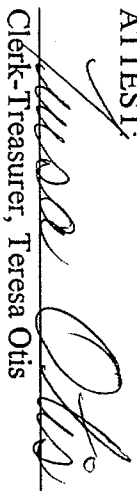
David Mikesell


Russell Lamb

Russell Lamb

Russell Lamb

ATTEST:


Clerk-Treasurer, Teresa Otis

This document prepared by Town Manager Jerry Rosenberger and

Reviewed by: Brian J. Zaiger, Attorney at Law
CHURCH, CHURCH, HITTLE & ANTRAM

The attached text is taken from our current Westfield ordinances that addresses Peddlers and Solicitors.

CODE Town of WESTFIELD, INDIANA Codified through Ord. No. 98-18, enacted August 1998

CODE OF ORDINANCES

Chapter 46 PEDDLERS AND SOLICITORS

Chapter 46 PEDDLERS AND SOLICITORS *

Sec. 46-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Itinerant merchant means any transient person who shall engage temporarily in the selling of any kind of goods, wares or merchandise, including the selling of photographs, within the town, regardless of whether such goods, wares or merchandise are peddled from house to house, sold upon the streets or other public places, or sold from any room, building, structure or lot rented or leased for the purpose of carrying on such business, and shall include any person, selling from house to house or place to place, who does not have a regularly established place of business in the town.

Solicitor means any person who goes from house to house or place to place in the town selling or taking orders for goods, wares or merchandise of any article for future delivery.

(Code 1990, § 5.04.020)

Cross reference(s)--Definitions generally, § 1-2.

Sec. 46-2. License required.

It shall be unlawful for any person to engage in the business of itinerant merchant or in the business of solicitor within the town until the provisions of this chapter have been complied with.

(Code 1990, § 5.04.010)

Sec. 46-3. Exemptions.

The provisions of this chapter shall not apply to sales to dealers by commercial travelers, nor to sales by producers of farm or dairy products. Any person who shall sell or offer to sell any farm or dairy products which were not actually raised or produced by him or by members of his immediate family or shall not have an established place of business in the town shall be classed as an itinerant merchant.

(Code 1990, § 5.04.030)

Sec. 46-4. License application and fees.

(a) Any person desiring to engage in the business of peddler, solicitor or itinerant merchant within the town shall make application in writing to the clerk-treasurer of the town for a license to do so, which application shall be filed with the clerk-treasurer at least seven days before the applicant shall be authorized to begin such business. Such application shall state the name and residence of the applicant, the place where the business is to be conducted, the kind of goods to be sold, and the length of time for which

CODE Town of WESTFIELD, INDIANA Codified through Ord. No. 98-18, enacted August 1998**CODE OF ORDINANCES****Chapter 46 PEDDLERS AND SOLICITORS****Sec. 46-4. License application and fees.**

(b) Any person aggrieved may bring an action on the bond for the recovery of money or damages or both. If a cash bond is deposited, it shall be retained by the town for a period of 90 days after the expiration of any such license. Upon filing of such application and bond, and the approval of such bond by the clerk-treasurer of the town a license shall be issued by the clerk-treasurer of the town to such applicant to begin business not less than seven days after the date of filing such application and bond, upon the payment of the following fees:

- (1) For one day, \$10.00.
- (2) For one week, \$15.00.
- (3) For one month, \$30.00.
- (4) For one year, \$100.00.

(c) All such license fees must be paid in advance and if any such licensee desires to continue in business after the expiration of such license, a new license must be secured in the same manner and upon the same terms as the original license. Any person exempted by the laws of the state from the payment of the license fees shall, before beginning such business, present to the clerk-treasurer of the town his credentials, showing that he is entitled to such exemption, and shall file a bond as above required, and upon approval of the bond by the clerk-treasurer, he shall receive a certificate from the clerk-treasurer authorizing him to engage in the business of solicitor or itinerant merchant within the town for any period not longer than one year. If at the end of such period the person desires to continue in such business, another certificate must be procured from the town clerk-treasurer.

(Code 1990, § 5.04.040)

State law reference(s)--Exemptions from Transient Merchant Law of Indiana, IC 25-37-1-2(1)--(8), 25-37-1-10.

Sec. 46-5. Food handler's certificate.

Any person desiring to engage in the business of solicitor or itinerant merchant who sells fruits, vegetables, bread, pastries or other foodstuffs, which have not been canned shall, before receiving their license or certificate as provided in section 46-4, present to the clerk-treasurer the certificate of a reputable doctor of medicine approved by the town council, certifying that the persons handling food are free from all venereal or transmittable diseases, and show that such examination has been made within 30 days from the date of receiving license and a new certificate shall be placed on file with the clerk-treasurer within 30 days from the date of the first certificate so long as such party shall continue to do business under the license. No person shall transact any business of selling such foodstuffs in the town under solicitor or itinerant merchant's license unless he shall have such physical examination certificate which is dated not more than 30 days before such business transaction.